



**Public Hearing of the  
Senate Committee on Veterans and Military Affairs, Biotechnology  
and Financial Institutions**

**Senate Bill 378 – Branch Banking  
January 10, 2008**

**Testimony of Daryll Lund, President & CEO  
Community Bankers of Wisconsin**

Honorable members of the Senate Committee on Veterans and Military Affairs, Biotechnology and Financial Institutions my name is Daryll Lund, President & CEO of the Community Bankers of Wisconsin (CBW). CBW is a statewide trade association representing the interests of approximately 220 community based financial institutions.

I appear before you today to testify in support of SB 378 related to branch banking. The CBW strongly supports passage of this bill that would amend Wisconsin's banking law to prohibit any bank from establishing a banking office within 1 ½ miles of property owned by the same corporation that is being used for commercial activity, effectively closing a loophole in Wisconsin's branching law.

As background, in 2006, Wisconsin enacted a reciprocal interstate bank branching law that allowed Wisconsin state and national banks to open interstate branches in other states that have adopted reciprocal interstate branching laws. This new law was enacted with the unanimous support of Wisconsin legislators and Governor Doyle.

Following enactment of Wisconsin's reciprocal interstate bank branching law a joint federal bank regulatory opinion was issued that called into question Wisconsin and other state laws that may prevent out-of-state industrial loan companies (ILCs) from branching into their states. According to this federal regulatory opinion interstate branching laws must apply equally to all banks, including ILCs.

SB 378 addresses the issue of ILCs branching into Wisconsin and importantly does so on an equal and non-discriminatory basis.

Reasons to support SB 378:

- 1. Maintain a competitive playing field for Wisconsin banks.** Wisconsin banks, thrifts and their holding companies are restricted by federal law from engaging in commercial retail activities that are not financial in nature. Banks for example do not have the opportunity to offer grocery, pharmacy, automobile or other types of retail products and services to their customers. ILCs however, can be owned by commercial firms thereby allowing for competitive opportunities not available to Wisconsin banks and thrifts. It is important to note that Wisconsin laws do not permit the formation of ILCs in this state
- 2. Supports the long-standing policy against the mixing of banking and commerce.** The separation of banking and commerce was codified in the United States going back to the Great Depression. ILCs however, represent an exception to this prohibition. Recent efforts by Wal-Mart, Home Depot, and other commercial firms to acquire ILCs have focused attention on this issue. In response to concerns expressed by various interested parties, the FDIC imposed a moratorium on ILC applications involving nonfinancial firms until January 31, 2008 and encouraged Congress to address the issue through legislation. In May of last year the House of Representatives passed a bill (H.R. 698), placing restrictions on ILCs by a vote of 371-16, including all members of the Wisconsin congressional delegation voting in favor. We are hopeful the U.S. Senate will act favorably on a similar bill in the near future.

While the Wisconsin legislature does not have oversight over federal banking laws you do have the authority to pass legislation such as SB 378 that allows for banking offices to be physically separated from the property owned by the same corporation that engages in commercial activities. It is important to reference that this will not impact the ability of Wisconsin banks to open bank offices in grocery stores and other retail establishments since these enterprises are not owned or controlled by the bank or an affiliate.

- 3. Confidence in the banking system is the bedrock of our financial system.** Confidence in our banking system is the result of maintaining a careful system of checks and balances between banking laws and regulations. Since the start of the FDIC in 1933, no depositor has ever lost a penny of insured deposits. The mixing of banking and commerce could undermine confidence in the banking system by removing the independence of banks as arbiters of credit allocation. A bank's credit decision should be based on the creditworthiness of the borrower not by the entity that owns the bank. Since our state-banking department will be limited in its ability to examine the operations of out-of-state ILC branches passage of SB 378 will at minimum place locational restrictions on the offices of such entities.



**Testimony of the Wisconsin Bankers Association  
Rose Oswald Poels, Senior Vice President**

**Senate Committee**

**Veterans and Military Affairs, Biotechnology and Financial Institutions**

**January 10, 2008**

**Testimony in support of SB 378**

Chairman Sullivan and members of the Committee:

Thank you for the opportunity to testify on behalf of the Wisconsin Bankers Association (WBA) in support of Senate Bill 378. My name is Rose Oswald Poels, Senior Vice President for WBA. The Wisconsin Bankers Association is the state's largest financial industry trade association, representing 300 commercial banks and savings institutions, their nearly 2,300 branch offices and 28,000 employees.

Senate Bill 378 updates Wisconsin's branching law to be consistent with many states throughout the country by prohibiting banks from establishing or maintaining branches in Wisconsin that are located within a 1.5-mile radius of premises or property owned, leased, or controlled by a bank affiliate that engages in commercial activities. The bill is important for several reasons.

**Separation of Banking and Commerce**

SB 378 helps maintain the prudent separation of banking and commerce activity that is universally recognized as crucial to both the overall economic health of this country and to maintain the current strength and vitality of the banking system. In fact, the policy set by Congress decades ago separating banking and commerce activity was largely a reaction to the perception that banks, *especially* those in a larger conglomerate organization, had a disproportionate amount of economic power in the period leading up to the stock market crash of 1929.

Specifically, SB 378 is important due to the growth of a particular "bank" charter called industrial banks or industrial loan companies (ILCs). ILCs began in the early 1900s as small, state-chartered loan companies that primarily served the borrowing needs of industrial workers unable to obtain noncollateralized loans from banks.<sup>1</sup> The ILC industry has morphed over time to include some of the largest financial institutions with extensive access to the capital markets. Today, while there are only a few states that offer ILC charters, with Utah being the most notable, the asset size of existing chartered ILCs has exponentially grown into the

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<sup>1</sup> Report to the Honorable James A. Leach, House of Representatives, on Industrial Loan Corporations dated September 2005, GAO-05-621, page 5.

hundreds of billions of dollars. ILCs are seen as a loophole to the notion of separating banking and commerce and, in fact, several requests for an ILC charter are pending today by large commercial enterprises.

#### **Maintaining Reciprocal Branching Laws**

In addition, SB 378 maintains the necessary legal reciprocity with other states like Illinois permitting de novo interstate branching. Parity among state laws is important in this case because in the spring of 2006, Wisconsin amended its statutes to allow the de novo branching of Wisconsin banks to other states and others that have reciprocal laws into this state. Currently, over 20 states have passed branching laws and many of these states are now adopting provisions similar to SB 378. To maintain legal reciprocity with these states, Wisconsin must change its law.

#### **Congressional Action Uncertain**

While Congress is in the midst of acting on legislation regulating specific charters of banks, this process is being stalled at a time when the Federal Deposit Insurance Corporation (FDIC) just ended a moratorium on applications for industrial loan company charters. Federal legislation would help guide the FDIC on this issue and while it overwhelmingly passed the U.S. House of Representatives, it is stalled in the Senate. In the absence of congressional action, this bill gives important clarity to state regulators and keeps Wisconsin current with other states.

#### **Further Description of SB 378**

The bill defines "affiliate" as any company that directly or indirectly controls, or is under common control with, another company. The bill defines "commercial activities" as those activities in which a bank holding company, financial holding company, national bank, state bank, or state universal bank are not authorized to engage under federal or state law. Each bank must certify to the Wisconsin Department of Financial Institutions (DFI) compliance with this prohibition. There exists a "grandfather" period as the provisions do not apply to branches approved by DFI before the effective date of the bill.

#### **Conclusion**

SB 378 is needed to help keep banking and commerce separate, to achieve parity among state laws regarding reciprocal branching agreements and to provide clarity to regulators when congressional action is uncertain. It further ties the hands of ILCs that may try to branch into Wisconsin using existing commercial enterprise locations.

WBA respectfully asks for your support of SB 378 and thanks you for your consideration of its request. I will be happy to answer any questions.